Remarks

Applicants have amended claims 1, 2, 5, 7, 10-19, 42-43, and 47-49 to expedite prosecution. Specifically, Applicants have amended claims 1, 2, 5 and 50 to make explicit that which was implicit, namely, that the promoter sequence is operably linked to the sequences they are linked to. Similarly, claim 5 and 50 has been amended to indicate that the DNA sequence of claim 1 is operably linked to an intron. Claims 1 and 2 have also been amended to clarify the grammar as suggested by the Examiner. Applicants have amended claim 2 to an embodiment, wherein mutations in one or more AP1 site of the claimed nucleic acids are required. Claim 7 has been amended to refer to an isolated DNA sequence to correct antecedent basis of the terms. Applicants have amended claims 11, 18, and 42 to add articles. Claim 43 has been amended to correct an error in the antecedent basis of the claim. Applicants have amended claims 14 and 15 to begin the claims with an article "the". Applicants have amended claim 17 to refer to "virus genomic nucleic acid" instead of "virus genome," and to correct antecedent basis for the term referred to in claim 1. Applicants believe that the amendments are clerical and thus do not introduce new matter. Accordingly, Applicants respectfully request that the amendments be entered.

The Examiner objected to claims 1, 2, 6, 7, 11, 12, 14, 15, 17-19, 34, 38 and 42-50. Specifically, the Examiner suggested that the claims 1, 2, 5, and 50 should refer to sequences that are "operably linked." The Examiner further requested correction of antecedent basis for claims 2, 12, 17, 19 and 49. The Examiner also requested that articles be added before each compound listed in the Markush groups of claims 11, 18, 42 and 48. The Examiner further requested that claim 17 should refer to "virus genomic DNA" instead of "virus genome."

Applicants have amended the claims 1, 2, 6, 7, 11, 12, 14, 15, 18, 19, 34, 38 and 42-50 as suggested by the Examiner. Applicants have amended claim 17 to refer to "virus genomic nucleic acid." The specification sets forth that viruses such as adenovirus, which is a DNA virus, as well as, for example HIV virus, which is a retrovirus having RNA genome can be used (see, e.g., page 4, lines 21-25. Accordingly, Applicants believe that referring to "virus genomic nucleic acid" instead of "virus genomic DNA" appropriately addresses the examiner's concern about the wording of the claim. Accordingly, Applicants respectfully submit that the objections have been obviated.

There being no rejections to claims 1, 6, 7, 11, 12, 14, 15, 17-19, Applicants believe that claims 1, 5-15, and 17-19 are now in condition for allowance.

The Examiner rejected claims 2 and 36-40 and 42-49 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 6,605,280 to Novick et al. ("Novick") or in the alternative, under 35 U.S.C. §103(a) over. Specifically, the Examiner alleges that the SEQ ID NO: 5 of Novick comprises a sequence that is identical to SEQ ID NO: 3 (specifically, nucleotides 5448 to 568 of SEQ ID NO: 5 of Novick) and is followed by a sequence (nucleotides 570-620 of SEQ ID NO: 5 of Novick) that is identical to SEQ ID NO: 5 of the present claims. In addition, the Examiner alleged that Novick discloses a sequence that consists of SEQ ID NO:2 absent the first 85 nucleotides.

Applicants respectfully disagree and submit that the rejection should be withdrawn for the following reasons.

Applicants have amended claim 2 to an embodiment, which requires that the claimed promoters or fragments have one or more AP1 site mutations.

Novick does not teach or suggest any sequences that have mutations in the AP1 sites of the promoter.

Accordingly, Applicants respectfully submit that the rejections of claims 2 and 36-40 and 42-49 under 35 U.S.C. §102(b) and 103(a) over Novick have been obviated.

The Examiner further rejected claims 2 and 35-49 under 35 U.S.C. §103(a) as allegedly obvious over Novick in vie of Hurgin et al. (J. Interferon and Cytokine Res. 24:S. 73, 2001)("Hurgin"). Specifically, the Examiner alleged that Hurgin discloses a 2 kb genomic sequence upstream of the human IL-18BP gene and that therefore Hurgin teached that expression of a gene can be mediated by the IL-18bp promoter which is present in the vectors of Novick.

Applicants respectfully disagree and submit that the rejection should be withdrawn for the following reasons.

As indicated, supra, claim 2 has been amended to an embodiment that requires one or more AP1 site mutations. Novick does not teach or suggest any such mutations. Hurgin does not cure this deficiency because also Hurgin does not disclose IL-18BP promoter with one or more AP1 site mutations.

Therefore, the combination of the cited references does not teach all the elements of the claims and the rejection of claims 2 and 35-49 under 35 U.S.C. §103(a) over Novick in view of Hurgin should be withdrawn.

In view of the foregoing, Applicants respectfully submit that all claims are in condition for allowance. Early and favorable action is requested.

In the event that any additional fees, such as additional claims fees are required, the Commissioner is hereby is authorized to charge any such additional fees to Nixon Peabody LLP deposit account No. 50-0850.

Date: December 3, 2009

Respectfully submitted,

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